

Before the
Federal Communications Commission
Washington, D.C. 20554

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MAR 14 2005

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	MB Docket No. 05-104
(Cherokee Village and Black Rock, Arkansas, and)	RM-10837
Thayer, Missouri; and Cave City, Arkansas))	RM-10838
)	
Reclassification of License of)	
Station KURB(FM), Little Rock, Arkansas)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 9, 2005

Released: March 14, 2005

Comment Date: May 5, 2005

Reply Comment Date: May 20, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two separate conflicting petitions for rule making. The first petition was jointly filed by KFCM, Inc. and Bragg Broadcasting, Inc., (hereinafter referred to as "Joint Petitioners"), proposing (a) the substitution of Channel 252C2 for Channel 252C3 at Cherokee Village, Arkansas, the reallocation of Channel 252C2 from Cherokee Village to Black Rock, Arkansas, and the modification of Station KFCM(FM)'s license accordingly; and (b) the reallocation of Channel 222C2 from Thayer, Missouri to Cherokee Village, Arkansas, and the modification of Station KSAR(FM)'s license accordingly (RM-10837). The second petition was filed by Charles Crawford ("Crawford") proposing the allotment of Channel 254A at Cave City, Arkansas, as the community's first local commercial FM transmission service. To accommodate the allotment, Crawford also proposes the reclassification of Station KURB(FM) at Little Rock, Arkansas from 253C to 253C0 (RM-10838).¹

2. The proposed reallocations were filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing

¹ Station KURB(FM) operates on Channel 253C with an effective radiated power of 100 kilowatts at 392 meters height above average terrain (HAAT), which is below the minimum Class C antenna height of 451 meters HAAT. Therefore Station KURB(FM) is subject to reclassification as a Class C0 facility. See *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21,649 (2000). Pursuant to the requirements set forth in Note 4 of Section 73.3573 of the rules, we issued an *Order to Show Cause* to Citadel Broadcasting Company, licensee of Station KURB(FM), affording it 45 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action. See *In Re Reclassification of License of Station KURB(FM) Little Rock, Arkansas*, 19 FCC Rcd 2100 (MB 2004). No response was received, and therefore, in accordance with the Commission's reclassification procedures noted above, the license for Station KURB(FM) will be reclassified in the context of this proceeding to specify operation on Channel 253C0 instead of Channel 253C at Little Rock, Arkansas.

expressions of interest.² In support of its proposal, Joint Petitioners state that Black Rock is incorporated with a 2000 U.S. Census population of 717 persons. Black Rock has its own locally elected mayor, city council, police department, volunteer fire department, post office, two separate zip codes, and a public school system that covers Grades K-12. There are at least five churches, senior citizens center, two parks, an athletic complex, and a state park in the immediate vicinity. The city has its own municipal water and power. There are over ten retail businesses in Black Rock, including a large auto dealership and grocery store.

3. Since KFCM, Inc. seeks to change its transmitter site, it has provided the required gain and loss study. Bragg Broadcasting, Inc. does not seek to change its transmitter site and a gain and loss study is not required. Moreover, neither the proposed reallocation of Channel 252C2 to Black Rock nor the reallocation of Channel 222C2 to Cherokee Village as a replacement service is in or near an urbanized area. Therefore, no *Tuck* analysis is necessary.³

4. Crawford advises that Channel 254A is the only Class A channel available for allotment at Cave City, Arkansas.⁴ In support of its proposal, Crawford states that Cave City is an incorporated community with a 2000 U.S. Census population of 1,946 persons. Cave City has its own mayor, schools, city offices, volunteer fire department, police department, post office, and a number of local churches. Crawford further states that the allotment of Channel 254A Cave City will provide additional diversity and an outlet for local self-expression for its residents. As stated above, to accommodate the allotment Crawford also requests the reclassification of Station KURB(FM) from 253C to 253C0.

5. We believe that both proposals warrant consideration. We shall offer both proposals for comment and request Joint Petitioners and Crawford, or other parties, to provide a comparative analysis on the proposals. In particular, the showings should demonstrate from the proposed sites which of the proposals will provide service to a greater population and area in the expanded service area. The reallocation of 252C2 to Black Rock will not deprive Cherokee Village (population 4,648) of its sole local service, whereas Channel 222C2 is proposed herein as a replacement service. Moreover, the reallocation of Channel 222C2 to Cherokee Village will not deprive Thayer (population 2,201) of its sole local service, whereas Station KALM(AM) (1290 KHz) will remain licensed to the community. An engineering analysis has determined that Channel 252C2 can be reallocated to Black Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.0 kilometers (3.1 miles) southwest at Joint Petitioners' requested site.⁵ Additionally, Channel 222C2 can be reallocated to Cherokee Village at Station KSAR(FM)'s presently licensed site.⁶ Likewise, Channel 254A can be allotted to Cave City with a site restriction of 1.0 kilometers (0.6 miles) southwest to avoid a short-spacing to the licensed site of Station WJZN(FM), Channel 255C1, Munford, Tennessee.⁷ Channel 253C

² See *Modification of FM and TV Authorizations to Specify a new Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

³ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)* 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁴ See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

⁵ The coordinates for Channel 252C2 at Black Rock are 36-05-25 North Latitude and 91-08-55 West Longitude.

⁶ The coordinates for Channel 222C2 at Cherokee Village are 36-21-58 North Latitude and 91-28-35 West Longitude.

⁷ The coordinates for Channel 254A at Cave City 35-56-11 North Latitude and 91-33-27 West Longitude.

can be allotted to Little Rock at Staton KURB(FM) presently licensed site.⁸ As proposed, we shall propose to modify the license of Station KFCM(FM) to specify operation on Channel 252C2 at Black Rock, Arkansas, and the license of Station KSAR(FM) to specify operation on Channel 222C2 at Cherokee Village, Arkansas, as their new community of license. Pursuant to Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 252C2 at Black Rock, Arkansas, or the use of Channel 222C2 at Cherokee Village, Arkansas, or require the Joint Petitioners to demonstrate the existence of an equivalent class channel for use of other interested parties.

6. Accordingly, we seek comment on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
<u>OPTION I</u>		
Cherokee Village, Arkansas	252C3	222C2
Black Rock, Arkansas	---	252C2
Thayer, Missouri	222C2	---
<u>OPTION II</u>		
Cave City, Arkansas	---	254A
Little Rock, Arkansas	231C, 239C, 253C, 258A, 279C	231C, 239C, 253C0, 258A, 279C

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

8. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments or counterproposals on or before May 5, 2005, and reply comments on or before May 20, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Any counterproposal filed in this proceeding need only protect Station KURB(FM), Little Rock, Arkansas, as a Class C0 allotment. Additionally, a copy of such comments should be served on the following:

⁸ As indicated above, the minimum distance separation requirements are met based on the reclassification of Station KURB(FM) to specify operation on Channel 253C0 in lieu of Channel 253C at Little Rock, Arkansas at its licensed coordinates 34-47-56 North Latitude and 92-29-44 West Longitude.

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(Counsel for KFCM, Inc. and
Bragg Broadcasting, Inc.)

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205
(Petitioner)

9. In addition, a copy of this *Notice of Proposed Rulemaking* shall be sent to the following::

Citadel Broadcasting Company
City Center West, Suite 400
7201 W. Lake Mead Blvd.
Las Vegas, Nevada 89128

John W. Bagwell, Esq.
Leventhal, Senter & Lerman, PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20005

10. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

12. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner,

⁹ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.